

The complaint

Mr T has complained that Barclays Bank UK PLC, trading as Barclaycard, unfairly turned down his claim made under the Consumer Credit Act 1974 (“CCA”) about something bought using his Barclaycard.

What happened

In February 2013, Mr T, alongside another, purchased holiday club membership from a timeshare supplier (“the Supplier”). This cost £5,202 and was paid by Mr T using his Barclaycard credit card.¹ But this credit card payment wasn’t made directly to the Supplier, rather it went to a different business, “FNTC”.

In September 2017 Mr T made a claim to Barclaycard under s.75 CCA. In short, he said the Supplier made misrepresentations at the time of the sale that, under s.75 CCA, Barclaycard was jointly responsible to answer.

In February 2018, Barclaycard responded. It said that as FNTC was paid using the card and not the Supplier directly, it wasn’t responsible to answer the claim made under s.75 CCA. But Barclaycard also treated this response as a response to a complaint that it hadn’t properly considered the claim and explained that Mr T could refer it to our service. Mr T wasn’t satisfied with the response and so he referred his complaint to our service.

One of our investigators considered Mr T’s complaint and thought that there were the right sort of arrangements in place for Mr T to make a claim under the CCA. However, they went on to consider what Mr T had said and didn’t think there was enough to say there was a misrepresentation that Barclaycard needed to answer.

After our investigator gave their view, a court was asked to consider our approach in two decisions about the sale of timeshares like Mr T’s. Unfortunately it took some time for the court process to conclude, but after the judgment was handed down another investigator reconsidered Mr T’s complaint. They noted that a different court judgment² meant that, as Mr T’s payment had gone to FNTC and not the Supplier, it meant there weren’t the right arrangements in place after all and Barclaycard didn’t need to answer the claims made.

Mr T responded to say that he understood that the payment made to FNTC was transferred to the Supplier under a trustee arrangement. So he asked for the matter to be considered again by an ombudsman.

What I’ve decided – and why

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

When doing so, I’m required by DISP 3.6.4 R of the FCA Handbook to take into account:

¹ Mr T bought membership alongside his wife, but as the card used was in his name alone, only he is able to make this complaint.

² *Steiner v. National Westminster Bank plc* [2022] EWHC 2519 (KB) (“Steiner”)

“(1) relevant:

- (a) law and regulations;*
- (b) regulators’ rules, guidance and standards;*
- (c) codes of practice; and*

(2) (where appropriate) what [the ombudsman] considers to have been good industry practice at the relevant time.”

Mr T made a claim under s.75 CCA. I think it is helpful to set out the relevant legal provisions.

s.75(1) CCA states:

“If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor, who, with the supplier, shall accordingly be jointly and severally liable to the debtor”

s.12(b) CCA states that a debtor-creditor-supplier (“D-C-S”) agreement is a regulated consumer credit agreement being:

“a restricted-use credit agreement which falls within section 11(1)(b) and is made by the creditor under pre-existing arrangements, or in contemplation of future arrangements, between himself and the supplier”

An agreement is a s.11(1)(b) restricted-use credit agreement if it is a regulated CCA agreement used *“to finance a transaction between the debtor and a person (the “supplier”) other than the creditor”*.

The upshot of this is that there needs to be a D-C-S agreement in place for the lender (here Barclaycard) to be liable to the borrower (here Mr T) for the misrepresentations of the supplier (here the Supplier) under s.75 CCA. But, on the face of it, there were no such arrangements in place at the relevant times as the Supplier wasn’t paid directly using the credit card, rather the payments were taken by FNTC.

There are ways in which there can be a D-C-S agreement in place, even if the supplier isn’t paid directly using a credit card. Our investigator pointed to the judgment in *Steiner*, in which it was considered whether there was a D-C-S agreement in circumstances where FNTC took payment on a credit card in relation to the purchase of timeshare membership from a different timeshare supplier. The court considered the arrangements between the parties and concluded that, as the payment to that supplier was made outside of the credit card network and under the trust, in that instance there wasn’t a D-C-S agreement in place.

The circumstances of Mr T’s case are very similar. Here, FNTC, acting as trustee, took payment on behalf of a timeshare supplier in the same way. So, based on the judgment in *Steiner*, I think a court would come to a similar conclusion and say that there was no D-C-S agreement in place as any payment made to the Supplier was outside of the card network and, in turn, no valid s.75 CCA claim.

I’ve also thought about whether the Supplier and FNTC could be associated under s.184 CCA. Under that provision, there might still be a D-C-S arrangement in place if FNTC was paid for the Supplier’s services. But it would have to be shown that the same person (or group of people) effectively controlled both FNTC and the Supplier. And I can’t see that was

the case.

Under the rules set out above, I must take into account the law, but come to my own determination of what is fair and reasonable in any given complaint. Here, I don't think it would be fair to make Barclaycard responsible for the Supplier's alleged failures when the law doesn't impose such a liability – I can't see that Barclaycard and the Supplier were connected in any way nor is there any other reason to say Barclaycard should be responsible for the Supplier's alleged failings.

It follows that I don't think Barclaycard needs to answer the claim made.

My final decision

I don't uphold Mr T's complaint against Barclaycard Bank PLC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 16 February 2024.

Mark Hutchings
Ombudsman